



## FEDERAL ELECTION COMMISSION

### 11 CFR Part 100

#### [NOTICE 2018-16]

#### **Rulemaking Petition: Definition of Contribution**

**AGENCY:** Federal Election Commission.

**ACTION:** Rulemaking petition; notification of availability.

**SUMMARY:** On August 27, 2018, the Federal Election Commission received a Petition for Rulemaking, which asks the Commission to amend a regulation that defines the term “contribution” in light of a recent district court decision in Citizens for Responsibility & Ethics in Washington v. Federal Election Commission. The Commission seeks comments on the petition.

**DATES:** Comments must be submitted on or before [insert date 60 days after the date of publication in the Federal Register].

**ADDRESSES:** All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission’s website at <http://www.fec.gov/fosers>, reference REG 2018-03. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission’s website and in the Commission’s Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make

public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Mr. Tony Buckley, Attorney, Office of the General Counsel, 1050 First Street NE, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On August 27, 2018, the Commission received a Petition for Rulemaking from the Institute for Free Speech ("Petition"), asking the Commission to amend 11 CFR 100.52, which defines the term "contribution." Specifically, the Institute for Free Speech asks the Commission to amend this regulation in light of the decision in Citizens for Responsibility & Ethics in Washington v. FEC ("CREW"), 316 F. Supp. 3d 349 (D.D.C. 2018), appeal docketed, No. 18-5261 (D.C. Cir. Aug. 30, 2018).

Under the Federal Election Campaign Act, 52 U.S.C. 30101-45 (the "Act"), and Commission regulations, persons other than political committees that make independent expenditures aggregating over \$250 with respect to a given election in a calendar year must report to the Commission certain information regarding their independent expenditures. 52 U.S.C. 30104(c)(1); 11 CFR 109.10(b) and (e). The Act provides that such reports must include "the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year," and "the identification of each person who made a contribution in excess of \$200 to the person filing such statement which was made for the purpose of furthering an independent expenditure." 52 U.S.C. 30104(b)(3)(A), (c)(1), (c)(2)(C) (emphasis added). Commission regulations implemented these paragraphs by

requiring persons filing such reports to include the “identification of each person who made a contribution in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.” 11 CFR 109.10(e)(1)(vi) (emphasis added) (vacated effective September 18, 2018). Commission regulations define “contribution” as including a “gift, subscription, loan . . . , advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 11 CFR 100.52; see also 52 U.S.C. 30101(8)(A)(i) (same).

In CREW, the court declared invalid and vacated the reporting requirement at 11 CFR 109.10(e)(1)(vi) for persons other than political committees that make independent expenditures. The court held that the regulation failed to implement the statutory disclosure requirements of 52 U.S.C. 30104(c). CREW, 316 F.Supp.3d at 423.<sup>1</sup>

According to the Petition, “the court [in CREW] extended the scope of donations to nonprofit entities that may now be considered reportable contributions under the Federal Election Campaign Act . . . to include certain funds given to organizations that, while not political committees, spend \$250 in independent expenditures in a calendar year.” Petition at 1. The Petition argues that “the current definition of ‘Contribution’ is inaccurate and misleading, especially as it pertains to groups that are not political committees,” and “[t]o understand which donations [to these groups] are contributions and which are not, potential speakers must parse over 40 years of case law, because neither the statute nor the regulation defining contributions has been updated to reflect existing constitutional limits.” Id. at 5. In light of this, the Petition asks the Commission to open a rulemaking “to amend 11 CFR 100.52 to clarify the definition of ‘Contribution.’” Id.

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<sup>1</sup> An appeal of this decision is currently pending before the United States Court of Appeals for the District of Columbia Circuit.

The Commission seeks comments on the petition. The public may inspect the petition on the Commission's website at <http://www.fec.gov/fosers>, or in the Commission's Public Records Office, 1050 First Street NE, 12<sup>th</sup> Floor, Washington, DC 20463, Monday through Friday, from 9 a.m. to 5 p.m.

The Commission will not consider the petition's merits until after the comment period closes. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the Federal Register.

On behalf of the Commission,

Caroline C. Hunter,  
Chair,  
Federal Election Commission.

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